IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6895 of 2007()

CRMP.3308/2007 of D.C. & SESSIONS COURT,KOLLAM
CRIME NO.400/01 OF PATHANAPURAM POLICE STATION

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PETITIONER : 15TH ACCUSED

MANOJKUMAR
S/O.REGHUNATHA PILLAI
ALAPATTU VEEDU, EDATHUVA
PATHIRIKKAL, PATHANAMTHITTA.

BY ADV. SMT.VIVEEJA RAVEENDRAN

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSEPCTOR OF POLICE
PATHANAPURAM POLICE STATION
KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6895 of 2007

Dated this the 14th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Section 307 I.P.C. He is arrayed as the 15th accused. He was not arrested at the scene or in the course of investigation. The crux of the allegations is that the police party was attacked by an unlawful assembly of persons including the petitioner. The members of the unlawful assembly were dissatisfied that prompt action was not taken by the police in preparing the inquest report in respect of the death of an autorickshaw driver and his wife. The said autorickshaw driver was allegedly tortured by the police and thereafter he had expired and his wife had committed suicide. Members of the unlawful assembly were allegedly armed with dangerous weapons like stones, which they threw at the police party. Damage was caused to the police vehicle also. Allegations are raised under Section 3 of the P.D.P.P Act also. Investigation is now complete. Final report has already been filed. The petitioner is arrayed as the 15th accused though he has not been arrested in the course of the investigation. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False allegations are being raised against him. He was not arrested at the scene and he is not named as an accused in the F.I.R. Merely because he happens to be an important functionary of the C.P.M of the locality, false allegations are being raised against him. His application for anticipatory bail was dismissed by the learned Magistrate. The petitioner apprehends arrest in execution of the non bailable warrant issued against him by the learned Magistrate.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying or warranting the invocation of the discretion under Section 438 Cr.P.C. Available indications point to the culpability of the petitioner without any doubt, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I am unable to perceive any features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438

Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

6. It is for the petitioner to appear before the learned Magistrate in the ordinary course. The learned Magistrate, needless to say, must consider the application for bail on merits, in accordance with law and expeditiously. The mere fact that allegation of an offence triable by an Assistant Sessions Court is also included in the allegations, is no reason for the Magistrate to abdicate his jurisdiction under Section 437 Cr.P.C. The application for bail must be considered on merits, in accordance with law and expeditiously - on the date of surrender itself.

7. This bail application is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

rtr/-